IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.4976 of 2003
and
WPMP No.37289 of 2005

V.Loganathan .. Petitioner

vs

1.The Revenue Divisional Officer
Madurai District
2.District Revenue Officer
Madurai District
3.Jayalakshmi .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the respondents relating to the order of the first respondent bearing No. Na.Ka.N 5363/99-L dated 31.5.2000 and the consequent order of the second respondent bearing No.Na.Ka.N.44279/2001 G2 dated 24.1.2003 in Revision Petition No.11/2001 G2 and quash the same.

For Petitioner : Mr.V.Prakash
Senior Counsel
for Ms.G.Ramapriya

For Respondents : Mr.N.Senthilkumar
Additional Government
Pleader for RR1 & 2
Mr.V.Krishnan for R3

ORDER

Challenging an order of the first respondent the Revenue Divisional Officer, Madurai, made in Na.Ka.N 5363/99-L dated 31.5.2000, and the consequent order of the second respondent bearing No.Na.Ka.N.44279/2001 G2 dated 24.1.2003 in Revision Petition No.11/2001 G2, and seeking to quash the same, the petitioner has brought forth this writ petition.

2.The affidavit in support of the petition and the counter affidavit by the third respondent are perused. The Court heard the learned Counsel on either side.

3.The case of the petitioner in short, is that the petitioner's father was granted patta in respect of the land measuring 0.19.5 hectares in Survey No.142/3 B2 in Kovilkurivithurai Village, Vadipatti Taluk. Even the father and thereafter, the petitioner have been in continuous possession and enjoyment of the property. On 29.3.1996, the Deputy Tahsildar, Vadipatti, issued orders deleting the name of the petitioner's

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father from the patta register, and he also granted a joint patta in favour of the third respondent and her children. An objection was raised by the petitioner to the District Collector on 23.3.1998, who forwarded the petition to the Tahsildar. Consequent upon the same, the joint patta was revoked on the strength of the decree of the District Munsif's Court, Thirumangalam, made in O.S.No.106/76 dated 14.9.1976 between the same parties. Against the order of the Tahsildar, cancelling the patta, the third respondent filed an appeal to the Revenue Divisional Officer, who by an order dated 31.5.2000, remanded the matter to the Tahsildar. Aggrieved over the same, the petitioner filed a revision petition before the District Revenue Officer, Madurai, who made an order on 24.1.2003, for the issuance of patta in favour of the third respondent. Under the circumstances, this writ petition has arisen before this Court.

4.The learned Senior Counsel in his sincere attempt of assailing the order under challenge, raised two points.

(i) First of all, the order has got to be set aside since a jurisdictional error is noticed. When an order of the Revenue Divisional Officer was challenged before the District Revenue Officer, the second respondent herein, he should not have assumed the original jurisdiction and should not have ordered issuance of patta in favour of the third respondent. What was before him was only whether the order of remand made by the first respondent, was correct or otherwise. But, he has assumed original jurisdiction and passed an order for issuance of patta, and hence, that order lacks.

(ii) Secondly, the petitioner's father filed O.S.No.106/76 on the file of the District Munsif, Thirumangalam, against the predecessor in interest of the third respondent, and a decree came to be passed. It was a suit for declaration and for permanent injunction alleging that the plaintiff was in actual possession and enjoyment of the property in question, and that decree would be naturally binding on the third respondent. The respondents 1 and 2 have not adverted their attention to the decree which was in force and against which no appeal was preferred. Thus, it becomes final also. Under the circumstances, the order has got to be set aside.

5.The learned Counsel for the third respondent would submit that it was a case where an appeal should have been preferred before the Land Commissioner; that it is a case where effective remedy is available; that without exhausting the same, the writ jurisdiction has been invoked, and hence, it has got to be dismissed. Added further, the learned Counsel that even the decree passed by the District Munsif, Thirumangalam, in O.S.No.106/76, was also brought to the notice of the respondents 1 and 2; that the same has also been considered, and orders have been passed, and under the circumstances, the writ petition has got to be dismissed.

6.The Court paid its anxious consideration on the submissions made. This Court is able to see sufficient force in the contentions put forth by the learned Counsel for the petitioners.

7.Firstly, once a jurisdictional error is noticed by the Court in the orders passed by the first respondent, without any hesitation it has got to be set aside. Now, the contentions put forth by the learned Counsel for the third respondent that there is an efficacious alternative remedy that is available, cannot be a ground to direct the party to go for an

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appeal since the jurisdictional error is noticed. Under the circumstances, writ jurisdiction can be invoked, and accordingly, it has been done.

8.Secondly, once there was a decree passed by the District Munsif's Court, Thirumangalam, in O.S.No.106/76 which was between the inter se parties, and it is also binding on the parties against which no appeal has been preferred, and it has also become final, it is a matter of surprise to note that how it escaped the vision of the authority below. In such circumstances, without any hesitation, the orders of the respondents 1 and 2 have got to be quashed. Accordingly, they are set aside, and the matter is directly remitted to the Revenue Divisional Officer, the first respondent herein, to make a proper enquiry as to the issuance of patta, and pass necessary orders as one required under the circumstances and also the law would warrant. Accordingly, this writ petition is disposed of. No costs. Consequently, connected WPMP is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1.The Revenue Divisional Officer
Madurai District

2.District Revenue Officer
Madurai District

3. The Section Officer,
V.R.Section, High Court,
Madras.

1 CC To Mr.P.Chandrasekaran, Advocate, SR NO.57242.

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